

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Appropriate Framework for Broadband)	
Access to the Internet over Wireline Facilities)	CC Docket No. 02-33
)	
Consumer Protection in the Broadband Era)	WC Docket No. 05-271

**COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Telecommunications Industry Association (TIA) hereby submits comments to the Federal Communications Commission (Commission) in response to the Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding.¹

TIA is the leading trade association for the information and communications technology (ICT) industry, with 600 member companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry and forges consensus on industry standards. Among their numerous lines of business, TIA member companies design, produce, and deploy network and terminal equipment, including equipment used in broadband-enabled networks.

As a result, TIA has a vested interest in this proceeding, and respectfully offers the following comments.

¹ *Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 05-271 (released September 23, 2005) (“NPRM”).

I. THE COMMISSION SHOULD REFRAIN FROM IMPOSING LEGACY REGULATIONS ON BROADBAND-ENABLED SERVICES, ABSENT DEMONSTRABLE EVIDENCE OF THE NEED FOR SPECIFIC CONSUMER PROTECTIONS.

TIA long called for and fully supports the Commission's decision in this proceeding to classify wireline broadband Internet access services as "information services" under the Communications Act. TIA fully supported the same determination for cable modem-based broadband Internet access, and supports such classification for all broadband platforms.

This information service classification is important precisely because it protects the competitive and dynamic broadband Internet access market from the full panoply of Title II legacy regulations. Title II was crafted for a common carrier, telephone industry characterized by recognized monopolies and limited consumer choice. In contrast, consumers today generally have broadband options available from a host of providers and platforms, including wireline, cable, wireless and satellite. And the trend is more choice, not less, as new wireless technologies emerge, spectrum is made available, and broadband over powerline technologies mature.

As a result, TIA believes it is a serious mistake to impose specific regulations and concepts from Title II on broadband services. First, competition will continue to act as a check on provider conduct as consumers can and will simply switch to competing broadband providers. In short, the broadband marketplace is working. Imposition of the types of regulations considered in the *NPRM*, prior to demonstrable evidence of their

need, will serve as weights on investment, innovation and competition among and between broadband platforms.

All of the issues specifically listed in the *NPRM*, such as slamming, CPNI, truth-in-billing, rate averaging, and federal versus state oversight, have their origins in a one-wire world and were imposed to remedy specific problems. Until and unless similar problems arise in the wireline broadband market, the Commission should refrain from imposing additional regulations on wireline broadband services.

Moreover, many of the rules from the telephony environment simply make no sense with respect to broadband Internet access. One example is slamming as TIA is unaware of consumers experiencing the unauthorized switching of broadband Internet access providers. Such conduct is an unlikely occurrence in the broadband marketplace for technical reasons and because consumer Internet applications (*i.e.* email) often are configured in a way that is tied to the access provider.

The Commission therefore should not reflexively apply *any* Title II obligations or regulations to any broadband Internet access service. Rather, the Commission needs to identify when a specific and demonstrable consumer concern arises, assess the jurisdictional aspect, and then determine how best to narrowly address the specific issues before it. Only in this way will the Commission continue to breathe full life into the important classification decision made in this and the cable modem proceedings.

II. NETWORK OUTAGE REPORTING REQUIREMENTS SHOULD NOT BE IMPOSED ON BROADBAND INTERNET ACCESS SERVICE PROVIDERS.

The Commission currently requires certain communications providers to notify the Commission of outages of thirty or more minutes that affect a substantial number of customers or involve major airports, major military installations, key government facilities, nuclear power plants, or 911 facilities.² TIA and its member companies are sympathetic to the Commission's fundamental desire to contribute to increasing network security and reliability, and its concerns regarding homeland security. Although mindful of these objectives, TIA has reservations about the Commission exercising its Title I authority in order to extend the network outage reporting requirements to areas not currently subject to these rules, namely broadband Internet access services.

If the Commission concludes that the network outage reporting requirements should in fact be extended to broadband Internet access services, TIA urges the Commission to refrain from imposing these requirements on non-affiliated entities that maintain or provide communications systems or services used by the provider in offering such communications. Contracts between network operators and equipment suppliers in many instances include provisions for continued maintenance by the vendor and sometimes for the vendor to provide services such as network management. In all cases, however, only the service providers – the network operators – are in a position to provide

² 47 C.F.R. § 63.100(a)-(e); *see also New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16867, para. 65 (2004).

full and complete information about the operations of their networks, which typically make use of equipment provided by multiple vendors.

Moreover, if these requirements were imposed on broadband Internet access services, notwithstanding TIA's urging to the contrary, TIA believes it would be a critical mistake to require that providers identify the name or type of equipment that failed. Such a requirement would automatically create an implication that the equipment failure was a cause of the network outage. A network, of course, can fail without a causal link to specific equipment; yet, it will be impossible to fully exonerate the equipment and vendor after the fact, leading to unfair and undeserved damage to the equipment supplier's business reputation.

TIA believes that concerns regarding harmful disclosures of sensitive information that could result from these reporting requirements are real and need thoughtful and considered analysis. As a result, the Commission should not rush to implement this system on services to which they did not previously apply without a thorough examination of all potential implications. The risks are very real and the consequences would be devastating should critical infrastructure information be exposed to unwarranted attack.


III. CONCLUSION

The Commission's *Wireline Broadband Order*, which this NPRM was predicated on, sought to establish "a minimal regulatory environment for wireline broadband Internet access services to benefit American consumers and promote innovative and

efficient communications.”³ Absent demonstrable evidence of the need for specific consumer protections, the Commission should maintain its path consistent with its earlier ruling and refrain from imposing legacy regulations on broadband Internet access services, including, but certainly not limited to, network outage reporting requirements.

Respectfully submitted,

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³ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33, para. 1 (released, September 23, 2005)(“Wireline Broadband Order”).